

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DAMON COATS and EVELYN  
MICHELLE FLORES,

Plaintiffs,

v.

CITY OF COSTA MESA et al.,

Defendants.

Case No. 8:24-cv-02337-JVS-JDE

STIPULATION AND PROPOSED  
PROTECTIVE ORDER

Based on the Parties' Stipulation (Dkt. 24) and for good cause shown,  
the Court finds and orders as follows.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than pursuing this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

1           2.     GOOD CAUSE STATEMENT

2           This action is likely to involve discovery that is confidential and  
3 privileged for which special protection from public disclosure and from use for  
4 any purpose other than prosecution of this action may be warranted. Such  
5 confidential and proprietary materials and information consist of, among other  
6 things, information pertaining to Costa Mesa Police Department's (CMPD)  
7 investigation of the underlying criminal activities, as well as peace officer  
8 personnel file information and/or documents which the parties agree include  
9 (1) Personal data, including marital status, family members, educational and  
10 employment history, home addresses, or similar information; (2) Medical  
11 history; (3) Election of employee benefits; (4) Employee advancement,  
12 appraisal or discipline; and (5) Complaints, or investigations of complaints, if  
13 any, concerning an event or transaction in which a peace officer participated,  
14 or which a peace officer perceived, and pertaining to the manner in which the  
15 peace officer performed his or her duties.

16           Such confidential materials and information consist of, among other  
17 things, materials which may be entitled to privileges and/or protections under  
18 the following: United States Constitution, First Amendment; the California  
19 Constitution, Article I, Section 1; California Penal Code §§ 832.5, 832.7 and  
20 832.8; California Evidence Code §§ 1040 and 1043 et. seq; the Privacy Act of  
21 1974, 5 U.S.C. § 552; Health Insurance Portability and Accountability Act of  
22 1996 (HIPPA); the right to privacy; decisional law relating to such provisions;  
23 and information otherwise generally unavailable to the public, or which may  
24 be privileged or otherwise protected from disclosure under state or federal  
25 statutes, court rules, case decisions, or common law.

26           Defendant also contends that such confidential materials and  
27 information are entitled to the Official Information Privilege. Sanchez v. City  
28 of Santa Ana, 936 F.2d 1027, 1033 (9th Cir. Cal.1990); see also Kerr v. United

1 States Dist. Ct. for N.D. Cal., 511 F.2d 192, 198 (9th Cir. Cal. 1975). Aff'd,  
2 426 U.S. 394, 96 S. Ct. 3229, 48 L.Ed.2d 725 (1976). The information  
3 otherwise may be generally unavailable to the public, or may be privileged or  
4 otherwise protected from disclosure under state or federal statutes, court rules,  
5 case decisions, or common law.

6 Further, discovery may require depositions, written discovery and/or the  
7 production of certain information the public disclosure of which could  
8 comprise officer safety, and/or raise security issues. Additionally, public  
9 disclosure of such information poses a substantial risk of embarrassment,  
10 oppression, and/or physical harm to peace officers whose confidential  
11 information is disclosed. The risk of harm to peace officers is greater than with  
12 other government employees due to the nature of their profession. The benefit  
13 of public disclosure of confidential information is minimal while the potential  
14 disadvantages are great.

15 Accordingly, to expedite the flow of information, to facilitate the prompt  
16 resolution of disputes over confidentiality of discovery materials, to adequately  
17 protect information the parties are entitled to keep confidential, to ensure that  
18 the parties are permitted reasonable necessary uses of such material in  
19 preparation for and in the conduct of trial, to address their handling at the end  
20 of the litigation, and serve the ends of justice, a protective order for such  
21 information is justified in this matter. It is the intent of the parties that  
22 information will not be designated as confidential for tactical reasons and that  
23 nothing be so designated without a good faith belief that it has been  
24 maintained in a confidential, non-public manner, and there is good cause why  
25 it should not be part of the public record of this case.

26 3. ACKNOWLEDGMENT OF UNDER SEAL FILING

27 The parties further acknowledge, as set forth in Section 14.3, below, that  
28 this Stipulated Protective Order does not entitle them to file confidential

1 information under seal; Local Civil Rule 79-5 sets forth the procedures that  
2 must be followed and the standards that will be applied when a party seeks  
3 permission from the court to file material under seal. There is a strong  
4 presumption that the public has a right of access to judicial proceedings and  
5 records in civil cases. In connection with non-dispositive motions, good cause  
6 must be shown to support a filing under seal. See Kamakana v. City and  
7 County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006), Phillips v. Gen.  
8 Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), Makar-Welbon v. Sony  
9 Electrics, Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated  
10 protective orders require good cause showing), and a specific showing of good  
11 cause or compelling reasons with proper evidentiary support and legal  
12 justification, must be made with respect to Protected Material that a party  
13 seeks to file under seal. The parties' mere designation of Disclosure or  
14 Discovery Material as CONFIDENTIAL does not— without the submission  
15 of competent evidence by declaration, establishing that the material sought to  
16 be filed under seal qualifies as confidential, privileged, or otherwise  
17 protectable—constitute good cause.

18 Further, if a party requests sealing related to a dispositive motion or trial,  
19 then compelling reasons, not only good cause, for the sealing must be shown,  
20 and the relief sought shall be narrowly tailored to serve the specific interest to  
21 be protected. See Pintos v. Pacific Creditors Ass'n., 605 F.3d 665, 677-79 (9th  
22 Cir. 2010). For each item or type of information, document, or thing sought to  
23 be filed or introduced under seal, the party seeking protection must articulate  
24 compelling reasons, supported by specific facts and legal justification, for the  
25 requested sealing order. Again, competent evidence supporting the application  
26 to file documents under seal must be provided by declaration.

27 Any document that is not confidential, privileged, or otherwise  
28 protectable in its entirety will not be filed under seal if the confidential portions

1 can be redacted. If documents can be redacted, then a redacted version for  
2 public viewing, omitting only the confidential, privileged, or otherwise  
3 protectable portions of the document, shall be filed. Any application that seeks  
4 to file documents under seal in their entirety should include an explanation of  
5 why redaction is not feasible.

6 4. DEFINITIONS

7 4.1 Action: Damon Coats, an individual; and Evelyn M. Flores, an  
8 individual, v. City of Costa Mesa, a municipal entity; Officer M. Gonzales  
9 #P678, an individual; Officer D. Bruno #P683, an individual; Officer  
10 Christopher James Greeley, an individual; and DOES 4 through 10 inclusive.

11 4.2 Challenging Party: a Party or Non-Party that challenges  
12 the designation of information or items under this Order.

13 4.3 “CONFIDENTIAL” Information or Items: information  
14 (regardless of how it is generated, stored or maintained) or tangible things that  
15 qualify for protection under Federal Rule of Civil Procedure 26(c), and as  
16 specified above in the Good Cause Statement.

17 4.4 Counsel: Outside Counsel of Record and House Counsel (as well  
18 as their support staff).

19 4.5 Designating Party: a Party or Non-Party that designates  
20 information or items that it produces in disclosures or in responses to discovery  
21 as “CONFIDENTIAL.”

22 4.6 Disclosure or Discovery Material: all items or information,  
23 regardless of the medium or manner in which it is generated, stored, or  
24 maintained (including, among other things, testimony, transcripts, and tangible  
25 things), that are produced or generated in disclosures or responses to discovery.

26 4.7 Expert: a person with specialized knowledge or experience in a  
27 matter pertinent to the litigation who has been retained by a Party or its  
28 counsel to serve as an expert witness or as a consultant in this Action.

1           4.8    House Counsel: attorneys who are employees of a party to this  
2 Action. House Counsel does not include Outside Counsel of Record or any  
3 other outside counsel.

4           4.9    Non-Party: any natural person, partnership, corporation,  
5 association or other legal entity not named as a Party to this action.

6           4.10 Outside Counsel of Record: attorneys who are not  
7 employees of a party to this Action but are retained to represent a party to this  
8 Action and have appeared in this Action on behalf of that party or are affiliated  
9 with a law firm that has appeared on behalf of that party, and includes support  
10 staff.

11           4.11 Party: any party to this Action, including all of its officers,  
12 directors, employees, consultants, retained experts, and Outside Counsel of  
13 Record (and their support staffs).

14           4.12 Producing Party: a Party or Non-Party that produces  
15 Disclosure or Discovery Material in this Action.

16           4.13 Professional Vendors: persons or entities that provide  
17 litigation support services (e.g., photocopying, videotaping, translating,  
18 preparing exhibits or demonstrations, and organizing, storing, or retrieving  
19 data in any form or medium) and their employees and subcontractors.

20           4.14 Protected Material: any Disclosure or Discovery Material  
21 that is designated as "CONFIDENTIAL."

22           4.15 Receiving Party: a Party that receives Disclosure or  
23 Discovery Material from a Producing Party.

24           5.    SCOPE

25           The protections conferred by this Stipulation and Order cover not only  
26 Protected Material (as defined above), but also (1) any information copied or  
27 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
28 compilations of Protected Material; and (3) any testimony, conversations, or



1 presentations by Parties or their Counsel that might reveal Protected Material.

2 Any use of Protected Material at trial shall be governed by the orders of  
3 the trial judge and other applicable authorities. This Order does not govern the  
4 use of Protected Material at trial.

5 6. DURATION

6 Once a case proceeds to trial, information that was designated as  
7 CONFIDENTIAL or maintained pursuant to this protective order used or  
8 introduced as an exhibit at trial becomes public and will be presumptively  
9 available to all members of the public, including the press, unless compelling  
10 reasons supported by specific factual findings to proceed otherwise are made to  
11 the trial judge in advance of the trial. See Kamakana, 447 F.3d at 1180-81  
12 (distinguishing “good cause” showing for sealing documents produced in  
13 discovery from “compelling reasons” standard when merits-related documents  
14 are part of court record). Accordingly, the terms of this protective order do not  
15 extend beyond the commencement of the trial.

16 7. DESIGNATING PROTECTED MATERIAL

17 7.1 Exercise of Restraint and Care in Designating Material for  
18 Protection. Each Party or Non-Party that designates information  
19 or items for protection under this Order must take care to limit any such  
20 designation to specific material that qualifies under the appropriate standards.  
21 The Designating Party must designate for protection only those parts of  
22 material, documents, items or oral or written communications that qualify so  
23 that other portions of the material, documents, items or communications for  
24 which protection is not warranted are not swept unjustifiably within the ambit  
25 of this Order.

26 Mass, indiscriminate or routinized designations are prohibited.  
27 Designations that are shown to be clearly unjustified or that have been made  
28 for an improper purpose (e.g., to unnecessarily encumber the case development

1 process or to impose unnecessary expenses and burdens on other parties) may  
2 expose the Designating Party to sanctions.

3 If it comes to a Designating Party's attention that information or items  
4 that it designated for protection do not qualify for protection, that Designating  
5 Party must promptly notify all other Parties that it is withdrawing the  
6 inapplicable designation.

7 7.2 Manner and Timing of Designations. Except as otherwise  
8 provided in this Order, or as otherwise stipulated or ordered, Disclosure of  
9 Discovery Material that qualifies for protection under this Order must be  
10 clearly so designated before the material is disclosed or produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic  
13 documents, but excluding transcripts of depositions or other pretrial or trial  
14 proceedings), that the Producing Party affix at a minimum, the legend  
15 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page  
16 that contains protected material. If only a portion of the material on a page  
17 qualifies for protection, the Producing Party also must clearly identify the  
18 protected portion(s) (e.g., by making appropriate markings in the margins).

19 A Party or Non-Party that makes original documents available for  
20 inspection need not designate them for protection until after the inspecting  
21 Party has indicated which documents it would like copied and produced.  
22 During the inspection and before the designation, all of the material made  
23 available for inspection shall be deemed "CONFIDENTIAL." After the  
24 inspecting Party has identified the documents it wants copied and produced,  
25 the Producing Party must determine which documents, or portions thereof,  
26 qualify for protection under this Order. Then, before producing the specified  
27 documents, the Producing Party must affix the "CONFIDENTIAL legend" to  
28 each page that contains Protected Material. If only a portion of the material on



1 a page qualifies for protection, the Producing Party also must clearly identify  
2 the protected portion(s) (e.g., by making appropriate markings in the margins).

3 (b) for testimony given in depositions that the Designating Party  
4 identifies the Disclosure or Discovery Material on the record, before the close  
5 of the deposition all protected testimony.

6 (c) for information produced in some form other than  
7 documentary and for any other tangible items, that the Producing Party affix  
8 in a prominent place on the exterior of the container or containers in which the  
9 information is stored the legend "CONFIDENTIAL." If only a portion or  
10 portions of the information warrants protection, the Producing Party, to the  
11 extent practicable, shall identify the protected portion(s).

12 7.3 Inadvertent Failures to Designate. If timely corrected, an  
13 inadvertent failure to designate qualified information or items does not,  
14 standing alone, waive the Designating Party's right to secure protection under  
15 this Order for such material. Upon timely correction of a designation, the  
16 Receiving Party must make reasonable efforts to assure that the material is  
17 treated in accordance with the provisions of this Order.

## 18 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 8.1. Timing of Challenges. Any Party or Non-Party may challenge a  
20 designation of confidentiality at any time that is consistent with the Court's  
21 Scheduling Order.

22 8.2 Meet and Confer. The Challenging Party shall initiate the dispute  
23 resolution process under Local Rule 37-1 et seq.

24 8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a  
25 joint stipulation pursuant to Local Rule 37-2.  
26

27 8.4 The burden of persuasion in any such challenge proceeding shall be  
28 on the Designating Party. Frivolous challenges, and those made for an

1 improper purpose (e.g., to harass or impose unnecessary expenses and burdens  
2 on other parties) may expose the Challenging Party to sanctions. Unless the  
3 Designating Party has waived or withdrawn the confidentiality designation, all  
4 parties shall continue to afford the material in question the level of protection  
5 to which it is entitled under the Producing Party's designation until the Court  
6 rules on the challenge.

7  
8 **9. ACCESS TO AND USE OF PROTECTED MATERIAL**

9 **9.1 Basic Principles.** A Receiving Party may use Protected Material that  
10 is disclosed or produced by another Party or by a Non-Party in connection  
11 with this Action only for prosecuting, defending or attempting to settle this  
12 Action. Such Protected Material may be disclosed only to the categories of  
13 persons and under the conditions described in this Order. When the Action has  
14 been terminated, a Receiving Party must comply with the provisions of section  
15 15 below (FINAL DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party  
17 at a location and in a secure manner that ensures that access is limited to the  
18 persons authorized under this Order.

19 **9.2 Disclosure of "CONFIDENTIAL" Information or Items.** Unless  
20 otherwise ordered by the court or permitted in writing by the Designating  
21 Party, a Receiving Party may disclose any information or item designated  
22 "CONFIDENTIAL" only to:

23 (a) the Receiving Party's Outside Counsel of Record in this  
24 Action, as well as employees of said Outside Counsel of Record to whom it is  
25 reasonably necessary to disclose the information for this Action;

26 (b) the officers, directors, and employees (including House  
27 Counsel) of the Receiving Party to whom disclosure is reasonably necessary  
28 for this Action;

1 (c) Experts (as defined in this Order) of the Receiving Party to  
2 whom disclosure is reasonably necessary for this Action and who have signed  
3 the “Acknowledgment and Agreement to Be Bound” (Exhibit A)

4 (d) the court and its personnel;

5 (e) court reporters and their staff;

6 (f) professional jury or trial consultants, mock jurors, and  
7 Professional Vendors to whom disclosure is reasonably necessary for this  
8 Action and who have signed the “Acknowledgment and Agreement to Be  
9 Bound” (Exhibit A);

10 (g) the author or recipient of records containing the information or  
11 a custodian or other person who otherwise possessed or knew the information;

12 (h) during their depositions, witnesses, and attorneys for witnesses,  
13 in the Action to whom disclosure is reasonably necessary provided: (1) the  
14 deposing party requests that the witness sign the form attached as Exhibit A  
15 hereto; and (2) they will not be permitted to keep any confidential information  
16 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit  
17 A), unless otherwise agreed by the Designating Party or ordered by the court.  
18 Pages of transcribed deposition testimony or exhibits to depositions that reveal  
19 Protected Material may be separately bound by the court reporter and may not  
20 be disclosed to anyone except as permitted under this Order; and

21 (i) mediators or settlement officers and their supporting personnel,  
22 mutually agreed upon by any of the parties engaged in settlement discussions.

23 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
24 PRODUCED IN OTHER LITIGATION

25 If a Party is served with a subpoena or a court order issued in other  
26 litigation that compels disclosure of any information or items designated in this  
27 Action as “CONFIDENTIAL,” that Party must:  
28

1 (a) promptly notify in writing the Designating Party. Such  
2 notification shall include a copy of the subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena  
4 or order to issue in the other litigation that some or all of the material covered  
5 by the subpoena or order is subject to this Protective Order. Such notification  
6 shall include a copy of this Stipulated Protective Order; and

7 (c) cooperate with respect to all reasonable procedures sought to be  
8 pursued by the Designating Party whose Protected Material may be affected. If  
9 the Designating Party timely seeks a protective order, the Party served with the  
10 subpoena or court order shall not produce any information designated in this  
11 action as “CONFIDENTIAL” before a determination by the court from which  
12 the subpoena or order issued, unless the Party has obtained the Designating  
13 Party’s permission. The Designating Party shall bear the burden and expense  
14 of seeking protection in that court of its confidential material and nothing in  
15 these provisions should be construed as authorizing or encouraging a  
16 Receiving Party in this Action to disobey a lawful directive from another court.

17 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO  
18 BE PRODUCED IN THIS LITIGATION

19 (a) The terms of this Order are applicable to information produced  
20 by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such  
21 information produced by Non-Parties in connection with this litigation is  
22 protected by the remedies and relief provided by this Order. Nothing in these  
23 provisions should be construed as prohibiting a Non-Party from seeking  
24 additional protections.

25 (b) In the event that a Party is required, by a valid discovery  
26 request, to produce a Non-Party’s confidential information in its possession,  
27 and the Party is subject to an agreement with the Non-Party not to produce the  
28 Non-Party’s confidential information, then the Party shall:

1 (1) promptly notify in writing the Requesting Party and the Non-  
2 Party that some or all of the information requested is subject to a  
3 confidentiality agreement with a Non-Party;

4 (2) promptly provide the Non-Party with a copy of the Stipulated  
5 Protective Order in this Action, the relevant discovery request(s), and a  
6 reasonably specific description of the information requested; and

7 (3) make the information requested available for inspection by the  
8 Non-Party, if requested.

9 (c) If the Non-Party fails to seek a protective order from this court  
10 within 14 days of receiving the notice and accompanying information, the  
11 Receiving Party may produce the Non-Party's confidential information  
12 responsive to the discovery request. If the Non-Party timely seeks a protective  
13 order, the Receiving Party shall not produce any information in its possession  
14 or control that is subject to the confidentiality agreement with the Non-Party  
15 before a determination by the court. Absent a court order to the contrary, the  
16 Non-Party shall bear the burden and expense of seeking protection in this court  
17 of its Protected Material.

18 12. UNAUTHORIZED DISCLOSURE OF PROTECTED  
19 MATERIAL

20 If a Receiving Party learns that, by inadvertence or otherwise, it has  
21 disclosed Protected Material to any person or in any circumstance not  
22 authorized under this Stipulated Protective Order, the Receiving Party must  
23 immediately (a) notify in writing the Designating Party of the unauthorized  
24 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
25 Protected Material, (c) inform the person or persons to whom unauthorized  
26 disclosures were made of all the terms of this Order, and (d) request such  
27 person or persons to execute the "Acknowledgment an Agreement to Be  
28 Bound" attached hereto as Exhibit A.

1           13.   INADVERTENT PRODUCTION OF PRIVILEGED OR  
2                   OTHERWISE PROTECTED MATERIAL

3           When a Producing Party gives notice to Receiving Parties that certain  
4 inadvertently produced material is subject to a claim of privilege or other  
5 protection, the obligations of the Receiving Parties are those set forth in  
6 Federal Rule of Civil\ Procedure 26(b)(5)(B). This provision is not intended to  
7 modify whatever procedure may be established in an e-discovery order that  
8 provides for production without prior privilege review. Pursuant to Federal  
9 Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on  
10 the effect of disclosure of a communication or information covered by the  
11 attorney-client privilege or work product protection, the parties may  
12 incorporate their agreement in the stipulated protective order submitted to the  
13 court.

14           14.   MISCELLANEOUS

15           14.1 Right to Further Relief. Nothing in this Order abridges the right of  
16 any person to seek its modification by the Court in the future.

17           14.2 Right to Assert Other Objections. By stipulating to the entry of this  
18 Protective Order, no Party waives any right it otherwise would have to object  
19 to disclosing or producing any information or item on any ground not  
20 addressed in this Stipulated Protective Order. Similarly, no Party waives any  
21 right to object on any ground to use in evidence of any of the material covered  
22 by this Protective Order.

23           14.3 Filing Protected Material. A Party that seeks to file under seal any  
24 Protected Material must comply with Local Civil Rule 79-5. Protected  
25 Material may only be filed under seal pursuant to a court order authorizing the  
26 sealing of the specific Protected Material. If a Party's request to file Protected  
27 Material under seal is denied by the court, then the Receiving Party may file  
28 the information in the public record unless otherwise instructed by the court.



